

Internal Revenue Service

memorandum

CC:TL:Br2

DCFegan

date: FEB 07 1986

TO: District Counsel, Hartford CC:HAR

FROM: Acting Director, Tax Litigation Division CC:TL

SUBJECT: [REDACTED]

This is in reply to your memorandum of November 8, 1985, requesting technical advice with respect to the above-captioned case.

The specific issue you presented was whether, under the noncorporate lessor provisions of IRC § 46(e)(3)(B), a Subchapter S corporation that lessed for a fixed number of hours per year an airplane with a useful life of seven years is entitled to the investment tax credit.

This issue was considered by the Corporation Tax Division, the Legislation and Regulations Division, the Interpretative Division, and the Tax Litigation Division. The issue broke down into two subissues (1) Was the "lease" really a lease or was it a service contract, and (2) If it was a lease, was the term of that lease less than 50 percent of the useful life of the airplane. The taxpayer would prevail if either it was a service contract or the term of the lease was less than 50 percent of the useful life of the airplane.

Without deciding either of these subissues, we conclude the combined litigating hazards are so great that the issue should not be tried. Accordingly, we recommend the petitioners in this case be allowed the investment credit with respect to the airplane.

MARLENE GROSS

By: 

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